

RECORD OF DECISION (ROD)
FEDERAL HIGHWAY ADMINISTRATION

CORRIDOR H

Elkins, WV to Virginia State Line
Randolph, Tucker, Grant and Hardy Counties
FHWA-WV-EIS-92-01-F
Federal Project APD-0484(059)
State Project X142-H-38.99 C-2

AMENDMENT #8: WARDENSVILLE TO WV/VA Stateline
Hardy County, WV

I. BACKGROUND

On August 2, 1996, the Federal Highway Administration (FHWA) issued a Record of Decision (ROD) for the 100-mile section of Appalachian Corridor H between Elkins, West Virginia, and the West Virginia/Virginia state line. The August 1996 ROD was based on a Final Environmental Impact Statement (FEIS) that was approved by FHWA in April 1996. The ROD approved the selection of the Preferred Alternative identified in the FEIS, which consisted of a four-lane divided highway with partial control of access from Elkins to the Virginia state line.

The approval of the Preferred Alternative in the ROD was conditioned upon completion of the remaining historic resource studies under Section 106 of the National Historic Preservation Act and Section 4(f) of the Department of Transportation Act. The ROD required these remaining studies to be carried out in accordance with a Section 106 Programmatic Agreement for the Corridor H project, which allowed the studies to be completed on a section-by-section basis following issuance of the ROD.

In September 1996, a lawsuit was filed challenging the approval of the Preferred Alternative in the ROD. In October 1997, the U.S. District Court for the District of Columbia dismissed the lawsuit. The plaintiffs appealed that decision to the U.S. Court of Appeals for the District of Columbia Circuit. The plaintiffs requested an injunction prohibiting further work on Corridor H while the appeal was pending, but the District Court denied that injunction.

In August, September, and October 1998, WVDOT awarded a total of nine contracts for the construction of approximately 9.5 miles of Corridor H, between Elkins and Kerens. In November 1998, the Court of Appeals issued an injunction that allowed work to continue under three of those construction contracts (approximately 3.5 miles) but required work to cease under the other six contracts (approximately 6 miles) and prohibited any further work on Corridor H while the lawsuit was pending.

In February 1999, the Court of Appeals issued an opinion in the case. The Court of Appeals held that the procedures established in the August 1996 ROD for completing

the review of historic resources did not comply with Section 4(f). Because of that ruling, the Court of Appeals ordered FHWA and WVDOT not to proceed further with construction of Corridor H until the Section 4(f) approval process had been completed.

In March 1999, the FHWA and WVDOT requested permission from the Court of Appeals to continue constructing the portion of Corridor H known as the Northern Elkins Bypass. The plaintiffs in the Corridor H lawsuit supported this request. In April 1999, the Court of Appeals issued an order clarifying that FHWA and WVDOT could proceed with the construction of the Northern Elkins Bypass while the remaining historic resource reviews for the remainder of Corridor H were completed. Based on that decision, the FHWA issued "Amendment #1" to the Corridor H ROD on April 26, 1999. The Amended ROD authorized construction to continue on the Northern Elkins Bypass.

Following the decision by the Court of Appeals, the parties to the Corridor H lawsuit agreed to enter into voluntary mediation as part of the U.S. District Court Mediation Program. The mediation process resulted in a settlement agreement, which was approved by the U.S. District Court in February 2000. Under the settlement agreement, the remainder of Corridor H in West Virginia has been divided into nine separate projects: Elkins-to-Kerens, Kerens-to-Parsons, Parsons-to-Davis, Davis-to-Bismarck, Bismarck-to-Forman, Moorefield-to-Baker, Baker-to-Wardensville, and Wardensville-to-Virginia-Line. The settlement agreement calls for a separate Amended ROD to be issued for each project, once the required studies for that project have been completed.

Since the court approved the settlement agreement, the FHWA has issued six Amended RODs for Corridor H:

- the Amended ROD for the Elkins-to-Kerens Project ("Amendment #2");
- the Amended ROD for the Moorefield-to-Baker Project ("Amendment #3");
- the Amended ROD for the Baker-to-Wardensville Project ("Amendment #4");
- the Amended ROD for the Davis-to Bismarck Project ("Amendment #5");
- the Amended ROD for the Bismarck-to-Forman Project ("Amendment #6);
- the Amended ROD from Forman to Moorefield ("Amendment #7").

This document – Amended ROD #8 – will be the seventh Amended ROD issued pursuant to the Settlement Agreement.

II. PROPOSED ACTION

The western terminus of this project is located near the Town of Wardensville on County Route 23/12, 0.2 miles south of WV 55/259 and the eastern terminus is located on WV 55, at a point approximately 100 feet west of the WV/VA state line. The proposed project would provide enhanced system linkage for various trip purposes in the region; namely, travel to and from work, recreational travel, and goods movement. It will provide direct and improved linkage among the major roadways in the region, namely, WV 55, WV 259N, CR 23/12, and CR 23/10. It will also allow through traffic to avoid passing through downtown Wardensville and the possible time delays and congestion associated with that traffic.

The completion of the Wardensville to the WV/VA Stateline Project will further advance WVDOT's objective of completing Corridor H as a continuous four-lane highway from I-79 to the West Virginia/Virginia state line. The Wardensville to the WV/VA Stateline Project, however, also will serve a useful transportation purpose on its own, and therefore, can be approved as a separate project consistent with the principles in 23 CFR 771.111(f). This finding is based on the following factors:

1. The western terminus of this project is located near the Town of Wardensville on County Route 23/12, 0.2 miles south of WV 55/259 and the eastern terminus is located on WV 55, at a point approximately 100 feet west of the WV/VA state line. The existing travel distance of seven miles takes an average trip time of 11 minutes. The highway has unpaved and narrow gravel shoulders. Approximately 2/3 of its distance is comprised of signed no-passing zones. The Wardensville-to-WV/VA State Line project would provide a four-lane divided facility without these deficiencies, and would reduce the trip time to 6 minutes.
2. The existing ADT on WV 55 between Wardensville and the WV/VA State Line varies from 2,150 to 4,600 vehicles per day. This translates to the roadway operating at LOS "C" in Sections 1 and 2; and LOS "D" in Section 3. LOS "C" is generally considered acceptable by WVDOT in rural areas. Once a roadway worsens from LOS "C," the WVDOT evaluates some action to improve the situation. Using the WVU Growth Model, 2013 and 2021 No-Build ADT's for WV 55 were derived. The 2013 No-Build projection lists two of the three sections operating at LOS "D" or worse, and by 2021 the entire corridor would be operating under unacceptable levels of service.
3. Approximately 445 heavy vehicles (including buses, RV's, medium and heavy trucks) traverse sections of WV 55 roadways through the project area daily. The majority of these heavy vehicles are medium and heavy trucks. The new facility would remove the majority of truck traffic from the existing facilities and route it to a new four-lane facility with partial control of access would improve level of service and safety in the region.
4. The Wardensville-to-WV/VA State Line Section of Corridor H is projected to have a 27 percent lower accident rate, a 33 percent lower injury rate, and a 43 percent lower fatality rate than the corresponding section of WV 55 . Even with increased travel on the facility due to induced growth and diverted trips, the lower accident rate on Corridor H would reduce the total number of accidents, injuries, and fatalities in the study corridor.
5. This Project would provide an approximately 5.5 mile long highway segment free from congestion, multiple driveways, and many geometric deficiencies associated with the existing route. Deficiencies in the existing route include:

- 43% of the route has steep 9% grades
 - Over 170 driveways creating conflict between local and through traffic
 - 10 to 11 foot lane-widths with little (less than 2') or no paved shoulder
 - 75% of length signed as no passing zones
6. The completion of this project would not limit the consideration of alternatives for other sections of Corridor H or for other reasonably foreseeable transportation improvements.

Based on all of the factors cited above, the FHWA has concluded that the approval of the Wardensville to the WV/VA State-Line Project is consistent with the regulatory principles set forth in 23 CFR 771.111(f).

III. ENVIRONMENTAL AND CULTURAL RESOURCE ISSUES

The FHWA has determined that all studies and findings required for approval of the Wardensville to the WV/VA State-Line Project have been completed and are supported by appropriate documentation in the project file. These include:

NEPA Compliance.

1996 FEIS. The impacts of the Wardensville to the WV/VA State-Line Project were documented in the April 1996 FEIS for Corridor H. In consultation with WVDOT, the FHWA has determined that no new information or changed circumstances exist that would require supplementation of the FEIS. Therefore, all studies required for this Project under the National Environmental Policy Act have been completed.

Section 7 Consultation. At the signing of the August 1996 ROD, no further Section 7 consultation was required for Rare, Threatened, or Endangered Species for Corridor H. Surveys were completed for the Cheat Mountain Salamander and Running Buffalo Clover in the areas of potential habitat within the Corridor H project area for the ASDEIS. No potential habitat existed for the Running Buffalo Clover or the Cheat Mountain Salamander within the Wardensville to the WV/VA Stateline project area. The results of these surveys are summarized in the FEIS (pages III-155-156).

Following the August 1996 ROD, the United States Fish and Wildlife Service (USFWS) requested additional consultation with FHWA regarding the potential impacts of Corridor H on the Indiana bat (*Myotis sodalis*), a federally listed endangered species. In response, FHWA and WVDOT prepared a Biological Assessment that evaluated the project's impact on bat summer roosting and swarming habitat as well as the project's potential to cause an incidental take of individual bats. Based on the small amount of habitat to be removed and following measures to reduce the risk for an incidental take, the Biological Assessment concluded that Corridor H as a whole is not likely to

adversely affect the Indiana bat. The measures for reducing the potential for incidental take of the species were detailed in the Biological Assessment. These measures include conducting mist net surveys to detect the presence or probable absence of the Indiana bat, or removal of summer potential roost trees during time of bat hibernation. The USFWS concurred with the conclusion of the Biological Assessment in a letter dated June 21, 1999; after which, the WVDOH opted to conduct mist net surveys for the Wardensville to the WVVA Stateline project. These surveys were completed between June to August, 2001. No Indiana bats were captured during the surveys. The mist net survey report concludes that the construction of the Wardensville to the WVVA Stateline Project would not likely result in an incidental take of the species and that the project is not likely to adversely affect the Indiana bat. The USFWS concurrence in the finding that construction of the Wardensville to the WVVA Stateline project is unlikely to adversely affect the Indiana bat, by letter dated November 9, 2001 concluded the required ESA Section 7 consultation process for the Wardensville to the WVVA Stateline Project.

Section 106 Consultation

Architectural/Historic Districts

Eligibility Evaluations. There are nine eligible historic resources located in this section of the project: Funkhouser-Earls House, Carpenters Avenue Historic District, Wardensville Main Street Historic District, Wilson House, Heltzel House, Cornwell Dyer House, Tharp-Orndorff House, James Mathias House I, and Evans House. Archaeological investigations conducted along and within the proposed route have been completed.

Effect Evaluations. Effect evaluations were completed for all of the eligible historic sites in the Wardensville to the WVVA Stateline Project, consistent with the consultation process required under the Section 106 Programmatic Agreement for Corridor H. The effect evaluations resulted in a finding by the Advisory Council on Historic Preservation (ACHP) that the Wardensville to the WVVA Stateline Project would have an adverse effect on the Funkhouser-Earls House, Carpenters Avenue Historic District, Wardensville Main Street Historic District, Wilson House, Heltzel House, Cornwell Dyer House, Tharp-Orndorff House, James Mathias House I, and Evans House.

Mitigation Plans. In accordance with the Section 106 Programmatic Agreement for Corridor H, a Mitigation Plan was prepared for the those historic resources (see above) that the ACHP found to be adversely affected. The Mitigation Plan has been approved by FHWA, WVDOH, the WVDCH (SHPO), and the ACHP. The approval of the Mitigation Plan for the Funkhouser-Earls House, Carpenters Avenue Historic District, Wardensville Main Street Historic District, Wilson House, Heltzel House, Cornwell Dyer House, Tharp-Orndorff House, James Mathias House I, and Evans House completed the Section 106 process for the Wardensville to the WVVA Stateline Project.

Archaeological

No National Register eligible archaeological sites were identified.

Section 4(f) Approval.

Historic Sites (Architectural/Historic Districts)

Direct Use. The Wardensville to the WVVA Stateline Project will not directly use land from any Section 4(f)-protected resource including National Register eligible historic sites (i.e., Funkhouser-Earls House, Carpenters Avenue Historic District, Wardensville Main Street Historic District, Wilson House, Heltzel House, Cornwell Dyer House, Tharp-Orndorff House, James Mathias House I, and Evans House).

Indirect (Constructive) Use.

Because the ACHP determined that the project would adversely effect the Funkhouser-Earls House, Carpenters Avenue Historic District, Wardensville Main Street Historic District, Wilson House, Heltzel House, Cornwell Dyer House, Tharp-Orndorff House, James Mathias House I, and Evans House, an analysis was conducted in accordance with 23 CFR 771.135(p)(6) to determine whether the project would constructively use that historic site. Based on this analysis, the FHWA has determined that the adverse effects of the project will not constitute a constructive use of Funkhouser-Earls House, Carpenters Avenue Historic District, Wardensville Main Street Historic District, Wilson House, Heltzel House, Cornwell Dyer House, Tharp-Orndorff House, James Mathias House I, or Evans House sites.

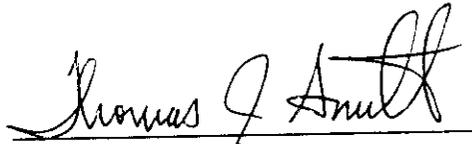
Historic Sites (Archaeological)

No National Register eligible archaeological sites were identified.

IV. DECISION

For the reasons identified in this Amended Record of Decision, the Federal Highway Administration has decided to approve the Wardensville to the WVVA Stateline Project of Corridor H as a separate transportation project.

May 5, 2003
Date


Thomas J. Smith
Division Administrator